

BOARD OF ADJUSTMENT MINUTES

DATE: August 27, 2007



1ST FLOOR
NORTH CONFERENCE ROOM
CITY HALL

Type of Meeting: PUBLIC HEARING

Vice-Chairman Richard Fort called a regular meeting of the Board of Adjustment to order at 2:00 p.m. Mr. Fort read the opening statement explaining the functions of the Board of Adjustment. Everyone giving testimony regarding a case before the Board was duly sworn. Notice was previously mailed to all required parties.

BOARD MEMBERS PRESENT:

Chair - Paul Smith.....ABSENT
Tom Muncy.....ABSENT
Beverly Robinson..... X
Richard FortX
Robert Middlemas..... X
Lee McElrath.....Alternate.....X
James Sheeler.....Alternate.....X

| CASE | STAFF PRESENTING CASE | GRANTED/DENIED/ CONTINUED |
|--------------------------|-----------------------|-----------------------------------|
| 1. 1232 Brevard Road | Michael Wheeler | Granted |
| 2. 15 Stone Cottage Lane | Blake Esselstyn | Granted |
| 3. 78 Long Shoals Rd. | Toni Vakos | Granted |
| 4. 125 Bleachery Blvd | Curt Euler | Case settled, taken off agenda |
| 5. 1039 Patton Avenue | Curt Euler | Case settled, taken off agenda |
| 6. | | |

Additional Information

STAFF PRESENT: Martha McGlohon, Beverly Williams, Curt Euler, Mike Wheeler, Toni Vakos, Blake Esselstyn

Curt Euler, Staff Attorney addressed the Board regarding case number 4 and 5 of today's agenda. Mr. Euler stated that both cases, 125 Bleachery Blvd, and 1039 Patton Avenue have been settled and will not be heard at today's Public Hearing before the Board of Adjustment.

CASE # 1

ADDRESS: 1232 (1266) Brevard Road

PETITIONER: Albert Morgan, Agent Tom Wilson

PIN # 9626.15-72-1826 and 9626.15-72-2913

REQUEST: Petitioner is proposing to construct a 14,400 sq. ft. retail building on the above referenced properties. The design of the project calls for off-street parking to be constructed in front of the structure.

Variance: The development standards for parcels located in the CBII zoning district requires parking to be located beside or behind the structure; therefore, the petitioner is seeking a variance of Section 7-8-13(f)(9) of the Unified Development Ordinance to allow parking to occur in front of the structure.

DISCUSSION: Mike Wheeler presented the case to the Board and went over his Staff Report. Mr. Wheeler stated that there are two parcels that will be combined to make up the site which total 1.73 acres. The lot is oddly shaped in a "U" shape configuration with the two legs of the lot fronting along Brevard Road for approximately 95 feet in width each. The majority of the property is located 120 feet from Brevard Road and this is the area of the lot the developer is proposing to construct the proposed 14,400 sq. ft. retail building on. None of the existing lots meets the requirements of the CBII district. The petitioner has proposed a lot of buffering and landscaping on the lot. It would be a hardship for them to develop and still meet the requirements.

Mr. Wheeler stated that staff finds the petitioner has demonstrated his need for the requested variance and recommend approval based on the submitted findings.

Opened Public Hearing: 2:07 p.m.

Closed Public Hearing: 2:16 p.m.

Motion: James Sheeler move to grant the variance as requested.

2nd By: Beverly Robinson

VOTE:

| | | |
|---------------------------|--|--------|
| | | 5 - 0 |
| | | |
| Paul Smith | | ABSENT |
| Tom Muncy | | ABSENT |
| Robert Middlemas | | Aye |
| Beverly Robinson | | Aye |
| Richard Fort | | Aye |
| Lee McElrath | | Aye |
| James Sheeler | | Aye |
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| The variance was granted. | | |
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| CASE # _2_ |
| ADDRESS: 15 Stone Cottage Lane |
| PETITIONER: Lauren Dawson (Appalachian Way, LLC) |
| PIN # 9628-13-04-6744 |

REQUEST: The petitioner, Lauren Dawson, is requesting a variance to Section 7-8-6(f)(5) of the UDO, a decrease in the minimum front setback, in order to allow a covered front porch while minimizing disturbance to a stream.

Variance: Petitioner is requesting a front setback variance of five feet (5') from a private right-of-way extending through the property. The request is for a setback of ten feet (10') instead of the required minimum of fifteen feet (15') in the RM-8 zoning district.

Background: The subject property was created as part of a subdivision recorded on January 8, 2007. There is a stream running along the west side of the property. At the time of the original survey, dense vegetation concealed the conditions near the stream. After construction of a single-family home on the lot had begun, the applicant discovered that locating the private drive as originally designed would require placement of the road beyond the top of the creek bank toward the stream. This location of the road would require engineering efforts which would have to be reviewed by the Army Corps of Engineers, and which would entail disturbance of the stream.

In June of 2007, the applicant applied for a subdivision modification, seeking a reduction in the width of the road by two feet, and a reduction in the front setback by two feet (which staff can approve through the UDO's flexible development provisions). Staff review discovered that, while these modifications would bring the bulk of the house footprint into compliance, the house includes a covered front porch that would encroach into the setback. The Engineering

department approved the reduction in the width of the road, but a variance in the front setback is necessary to preserve the porch while preventing additional impact on the stream.

DISCUSSION: Blake Esselstyn presented the case to the Board stating that the presence of the creek on the property prevents the applicant from using the land with the flexibility that would otherwise be available on a lot his size. Mr. Esselstyn further stated that the arrangement of the lot, with the sensitive stream area and private drive right-of-way occupying space, leave little room for a structure within the required setbacks. Granting the variance requested will allow the stream to escape further disturbance and will prevent an insult to the intended design of the house. City Council has addressed the issue of housing close to streams and in the future a subdivision closer than 30 ft. to a stream will not be approved. Staff feels there are adequate findings to support his variance as requested.

Opened Public Hearing: 2:18 p.m.
Closed Public Hearing: 2:45 p.m.

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| Motion: Beverly Robinson moved to grant the variance as requested. | 2 nd By: Lee McElrath & Robert Middlemas | VOTE: 5 - 0 |
| Paul Smith | | ABSENT |
| Tom Muncy | | ABSENT |
| Robert Middlemas | | Aye |
| Beverly Robinson | | Aye |
| Richard Fort | | Aye |
| Lee McElrath | | Aye |
| James Sheeler | | Aye |
| | | |
| The variance was granted. | | |

CASE # _3_

ADDRESS: 78 Long Shoals Road
PETITIONER: M. David Cogburn
PIN # 9644.07-79-0549

REQUEST: applicant is requesting a variance of Section 7-13-4(2)(b) of the Unified Development Ordinance in order to increase the maximum height requirement of the allowed freestanding to a proposed 20 feet. As a single tenant in the Institutional zone with an approved height variance awarded on 12/1994, the applicant is allowed a freestanding sign with a maximum height of 9'6" (zoning allows 8' without the variance) and maximum square footage per face of 60 square feet.

Background: The applicant had a 32 square foot, 9'6" high freestanding sign at the road edge of the property (perpendicular to Long Shoals Road with both faces Long Shoals Road from the east and west directions) that was removed by NCDOT with the road widening project on Long Shoals Road. The applicant was granted a height variance on 12/5/1994 to increase this sign height from 8' to 9'6". During the road construction, the sign was temporarily placed in front of the medical office with virtually no street visibility (Staff Exhibit A & B). The road widening project caused an increase in road elevation from 5-15' directly in front of the property, and a retaining wall was erected directly in front of the medical office building on property line limiting motorist visibility. With the completion of the road widening project, The applicant is proposing to install a new sign near the former freestanding sign location close to the roadside. The property is in the Institutional (INST) District, the purpose of which is the development of major educational and medical facilities with supporting health related, office, and public service uses. The property is a single tenant development and is allowed one freestanding sign with a maximum face square footage of 60 square feet (2 faces allowed) and maximum height of 8 feet (without a variance), as well as an attached sign with the same face square footage. As noted above, the applicant was previously granted a height variance from 8' to 9'6" but is requesting an additional height variance to erect a 20' tall freestanding sign with 50 square feet of face (Staff Exhibit C). The applicant is claiming patients, especially elderly patients traveling east on Long Shoals Road, will have difficulty seeing the allowed signage from the intersection of Long Shoals Road and Overlook Drive, and will miss the driveway turn-in. The applicant is proposing a sign (20' height) that exceeds the Overlook shopping center monument multi-tenant sign (17'4" height) across the street in the CBII zoning district (Staff Exhibit D). Staff feels the allowed signage (60 square feet of face at 8' feet high) coupled with the previously granted height variance to 9'6" is adequate for and consistent with the needs of a medical office building in INST and provides adequate motorist visibility (Exhibit E & F).

DISCUSSION: Toni Vakos presented the case to the Board. Ms. Vakos stated that the petitioner is requesting a variance to the height limitations for a freestanding sign in the INST zone. The petitioner is asking to be allowed a 20 ft. tall freestanding sign while the sign ordinance allows signs in the INST zone to be 8' tall. The sign will be on the east side of the entrance to the building. Ms. Vakos stated that the applicant was granted a previous variance for this sign in December, 1994 to allow the freestanding sign to be 9'6". Ms. Vakos presented a picture of the sign the applicant has and stated it use to be at street level. The widening of the road resulted in a retaining wall being install at the front of the petitioners property and creating an elevation difference of between 5 and 15 feet with the property being below the grade of the road.

David Cogburn addressed the Board and presented a photo showing the office before the widening of the road. The photo shows the office was at road level and now its down the hill several feet. Mr. Cogburn stated that since the widening of Long Shoals, his patients have had problems finding his office. Mr. Cogburn presented a letter from Groce Funeral Home and a letter form Lois McClain in support of the variance.

Carl Whitt/Crawford Sign Company and Attorney Max Cogburn testified before the Board concerning the repositioning of the sign since the widening of Long Shoals Road.

Opened Public Hearing: 2:49 p.m.

Closed Public Hearing: 3:57 p.m.

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| Motion: Robert Middlemas moved to have the petitioner work with staff to determine the position of the footer and have the footer start at the 6 ft. level. | 2 nd By: James Sheeler | VOTE: 5 – 0 |
| Paul Smith | | ABSENT |
| Tom Muncy | | ABSENT |
| Robert Middlemas | | Aye |
| Beverly Robinson | | Aye |
| Richard Fort | | Aye |
| Lee McElrath | | Aye |
| James Sheeler | | Aye |
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The Staff Attorney asked for clarification on the motion and the variance request.

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| Motion: Robert Middlemas modified his motion to say that the granting of the variance will be consistent with the conditions set forth by Board. The variance will be granted to allow the sign, and that the bottom of which will be 6 ft. from the level of the sidewalk further, the petitioner will work with staff to determine the position of the footer. | 2 nd By: James Sheeler | VOTE: 5 – 0 |
| Paul Smith | | ABSENT |
| Tom Muncy | | ABSENT |
| Robert Middlemas | | Aye |
| Beverly Robinson | | Aye |
| Richard Fort | | Aye |

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| Lee McElrath |
| James Sheeler |
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| The variance was granted with conditions. |

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| Aye |
| Aye |
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| CASE # 4 & 5 |
| ADDRESS: 125 Bleachery Blvd. ----1039 Patton Avenue |
| PETITIONER: American Promotional Events, Inc. d/b/a TNT Fireworks |
| PIN # |

DISCUSSION: Mr. Euler informed the Board that the above two cases had been settled and would be taken off the Board's Agenda.

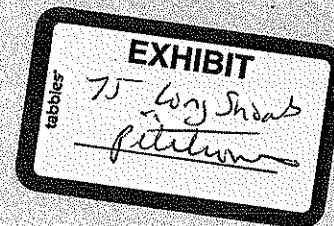
| | | |
|---|--------------------------------------|----------------|
| Motion: Lee McElrath moved to accept the Consent Order as presented by City Attorney Curt Euler | 2 nd By: Robert Middlemas | VOTE: 5 - 0 |
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| Paul Smith | | ABSENT |
| Tom Muncy | | ABSENT |
| Robert Middlemas | | Aye |
| Beverly Robinson | | Aye |
| Richard Fort | | Aye |
| Lee McElrath | | Aye |
| James Sheeler | | Aye |
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| The Board accepted the Consent Order | | |

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| Additional Information |
| OTHER BUSINESS: the minutes from the July 23, 2007 Public Hearing were approved unanimously. Robert Middlemas made the motion and it was seconded by Lee McElrath. |
| MEETING: |
| ADJOURNED: 4:00 p.m. |

Read, approved and adopted this 24 day of September, 2007.

Patti Case
Planning Technician

[Signature]
Chairman



August 27, 2007

To Whom It May Concern:

Groce Funeral Home at Lake Julian is located at 72 Long Shoals Road, just east of Carolina Mountain Dermatology, at 78 Long Shoals Road.

The North Carolina DOT has just finished a widening project of Long Shoals Road. During the construction, numerous cars had to enter our parking lot, to turn around to return to Dr. Cogburn's office, having missed his sign, located below the road. I have noticed that with the completion of the project, this has become more common place with Long Shoals now five lanes wide.

Allowing Carolina Mountain Dermatology to place a sign at road height would allow their patients much safer entry to their property and also lessen traffic on my property.

I would ask you to grant this variance on the sign placement.

Sincerely,

A handwritten signature in cursive script, appearing to read "W.H. Groce".

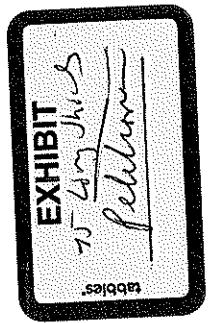
W.H. Groce

West Asheville
1401 Patton Avenue
Asheville, NC 28806-1793
828/ 252-3535

Lake Julian
72 Long Shoals Road
Arden, NC 28704-7782
828/ 687-3530

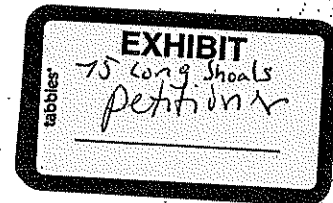
"I have been a patient of Dr. Cogburn's for 16 years. Since the widening of Long Shoal's Road I realized that I had to be more alert when looking for Dr. Cogburn's office. At my last visit on 8/20/07 I was very careful traveling from Hendersonville Road to Dr. Cogburn's office. I did not realize until I had gotten to Ingles just before the interstate that I had gone too far. The only way I could see Dr. Cogburn's office was if there was a sign"

Lois MacLean





State of North Carolina
Department of Justice



ROY COOPER
Attorney General

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Asheville, NC 28801

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August 27, 2007

Max O. Cogburn, Jr., Esq.
P.O. Box 120
Asheville, NC 28802-0120

Re: *Department of Transportation v. M. David Cogburn, et ux, et al*
Buncombe County: 04 CVS 3601
State Highway Project R-2813C, Parcel 31

Dear Max:

I spoke with your brother, Dr. David Cogburn, whom you represented in the above referenced condemnation action, earlier today, and he asked that I write to confirm certain aspects of our mediated settlement of that claim. Specifically, the Department's deposit in that case, based on its original estimate of compensation due, was \$108,000. At mediation, one of the principal elements of damage to the remaining property asserted by your clients was that the medical office was left significantly below the grade of the new road as a result of construction, and that visibility and access were thus negatively affected. After lengthy but congenial negotiations, an agreement was reached in settlement of all claims for a total amount of \$215,000 inclusive of the original deposit. As you know, the Consent Judgment disposing of the case is recorded in Book 4418, Page 1211-1216 of the Buncombe County Registry.

If you or David have further questions, feel free to contact me.

Best regards,

T. Lane Mallonee
Special Deputy Attorney General

TLM